

AMENDED IN ASSEMBLY JUNE 21, 2010

AMENDED IN ASSEMBLY JUNE 10, 2010

AMENDED IN SENATE APRIL 26, 2010

SENATE BILL

No. 1320

Introduced by Senator Hancock

(Coauthors: Assembly Members Beall, Eng, Hernandez, and Bonnie Lowenthal)

February 19, 2010

An act to amend Section 640 of the Penal Code, and to amend Sections 99580 and 99581 of the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1320, as amended, Hancock. Transit fare evasion and passenger misconduct: administrative adjudication.

Existing law provides that it is an infraction, punishable by a fine not to exceed \$250 and by specified community service, to evade the payment of any fare of, or to engage in passenger misconduct on or in a facility or vehicle of, a public transportation system. Existing law authorizes the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority to adopt and enforce an ordinance to impose and enforce civil administrative penalties for fare evasion or passenger misconduct, other than by minors, on or in a transit facility or vehicle in lieu of the criminal penalties, with specified administrative adjudication procedures for the imposition and enforcement of the administrative penalties, including an initial review and opportunity for a subsequent administrative hearing. Fare evasion and passenger misconduct violation penalties are deposited in the general

fund of the City and County of San Francisco or the County of Los Angeles, as applicable.

This bill would authorize the Santa Clara Valley Transportation Authority, ~~the Sacramento Regional Transit District~~, Foothill Transit, and the Alameda-Contra Costa Transit District to adopt and enforce a similar administrative adjudication ordinance. Fare evasion and passenger misconduct violation penalties would be deposited in the general fund of the county in which the citation is administered.

This bill would make various other changes to these provisions that would be applicable to all ~~6~~ 5 agencies. The bill would limit the amount of the administrative penalty to the maximum fine that may otherwise be imposed if the conduct were to be charged as an infraction and would provide that a person receiving an administrative citation may not also be charged with that infraction. The bill would require an issuing agency to adopt a written procedure for a person receiving a citation to request an administrative hearing without first paying the amount due, upon satisfactory proof of an inability to pay. The bill would expand the notification to be provided to the person by the issuing agency upon denial of an initial review of the citation.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 640 of the Penal Code is amended to
2 read:
- 3 640. (a) Any of the acts described in subdivision (b) is an
4 infraction punishable by a fine not to exceed two hundred fifty
5 dollars (\$250) and by community service for a total time not to
6 exceed 48 hours over a period not to exceed 30 days, during a time
7 other than during his or her hours of school attendance or
8 employment, when committed on or in any of the following:
- 9 (1) A facility or vehicle of a public transportation system as
10 defined by Section 99211 of the Public Utilities Code.
- 11 (2) A facility of, or vehicle operated by any entity subsidized
12 by, the Department of Transportation.
- 13 (3) A leased or rented facility or vehicle for which any of the
14 entities described in paragraph (1) or (2) incur costs of cleanup,
15 repair, or replacement as a result of any of those acts.
- 16 (b) (1) Evasion of the payment of a fare of the system.

1 (2) Misuse of a transfer, pass, ticket, or token with the intent to
2 evade the payment of a fare.

3 (3) Playing sound equipment on or in a system facility or
4 vehicle.

5 (4) Smoking, eating, or drinking in or on a system facility or
6 vehicle in those areas where those activities are prohibited by that
7 system.

8 (5) Expecterating upon a system facility or vehicle.

9 (6) Willfully disturbing others on or in a system facility or
10 vehicle by engaging in boisterous or unruly behavior.

11 (7) Carrying an explosive or acid, flammable liquid, or toxic or
12 hazardous material in a public transit facility or vehicle.

13 (8) Urinating or defecating in a system facility or vehicle, except
14 in a lavatory. However, this paragraph shall not apply to a person
15 who cannot comply with this paragraph as a result of a disability,
16 age, or a medical condition.

17 (9) (A) Willfully blocking the free movement of another person
18 in a system facility or vehicle.

19 (B) This paragraph shall not be interpreted to affect any lawful
20 activities permitted or first amendment rights protected under the
21 laws of this state or applicable federal law, including, but not
22 limited to, laws related to collective bargaining, labor relations,
23 or labor disputes.

24 (10) Skateboarding, roller skating, bicycle riding, or roller
25 blading in a system facility, vehicle, or parking structure. This
26 paragraph does not apply to an activity that is necessary for
27 utilization of the transit facility by a bicyclist, including, but not
28 limited to, an activity that is necessary for parking a bicycle or
29 transporting a bicycle aboard a transit vehicle, if that activity is
30 conducted with the permission of the transit agency in a manner
31 that does not interfere with the safety of the bicyclist or other
32 patrons of the transit facility.

33 (11) (A) Unauthorized use of a discount ticket or failure to
34 present, upon request from a transit system representative,
35 acceptable proof of eligibility to use a discount ticket, in
36 accordance with Section 99155 of the Public Utilities Code and
37 posted system identification policies when entering or exiting a
38 transit station or vehicle. Acceptable proof of eligibility must be
39 clearly defined in the posting.

(B) In the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, any citation issued shall be held for a period of 72 hours to allow the user to produce acceptable proof. If the proof is provided, the citation shall be voided. If the proof is not produced within that time period, the citation shall be processed.

(c) Notwithstanding subdivision (a), the City and County of San Francisco, the Los Angeles County Metropolitan Transportation Authority, the Santa Clara Valley Transportation Authority, ~~the Sacramento Regional Transit District~~, Foothill Transit, and the Alameda-Contra Costa Transit District may enact and enforce an ordinance providing that any of the acts described in subdivision (b) on or in a facility or vehicle described in subdivision (a) for which the City and County of San Francisco, the Los Angeles County Metropolitan Transportation Authority, the Santa Clara Valley Transportation Authority, ~~the Sacramento Regional Transit District~~, Foothill Transit, or the Alameda-Contra Costa Transit District has jurisdiction shall be subject only to an administrative penalty imposed and enforced in a civil proceeding. The ordinance for imposing and enforcing the administrative penalty shall be governed by Chapter 8 (commencing with Section 99580) of Part 11 of Division 10 of the Public Utilities Code and shall not apply to minors.

SEC. 2. Section 99580 of the Public Utilities Code is amended to read:

99580. (a) Pursuant to subdivision (c) of Section 640 of the Penal Code, the City and County of San Francisco, the Los Angeles County Metropolitan Transportation Authority, the Santa Clara Valley Transportation Authority, ~~the Sacramento Regional Transit District~~, Foothill Transit, and the Alameda-Contra Costa Transit District may enact and enforce an ordinance to impose and enforce an administrative penalty for any of the acts described in subdivision (b). The ordinance shall include the provisions of this chapter and shall not apply to minors.

(b) (1) Evasion of the payment of a fare of the system.

(2) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.

(3) Playing sound equipment on or in a system facility or vehicle.

1 (4) Smoking, eating, or drinking in or on a system facility or
2 vehicle in those areas where those activities are prohibited by that
3 system.

4 (5) Expectorating upon a system facility or vehicle.

5 (6) Willfully disturbing others on or in a system facility or
6 vehicle by engaging in boisterous or unruly behavior.

7 (7) Carrying an explosive or acid, flammable liquid, or toxic or
8 hazardous material in a system facility or vehicle.

9 (8) Urinating or defecating in a system facility or vehicle, except
10 in a lavatory. However, this paragraph shall not apply to a person
11 who cannot comply with this paragraph as a result of a disability,
12 age, or a medical condition.

13 (9) (A) Willfully blocking the free movement of another person
14 in a system facility or vehicle.

15 (B) This paragraph shall not be interpreted to affect any lawful
16 activities permitted or first amendment rights protected under the
17 laws of this state or applicable federal law, including, but not
18 limited to, laws related to collective bargaining, labor relations,
19 or labor disputes.

20 (10) Skateboarding, roller skating, bicycle riding, or roller
21 blading in a system facility, including a parking structure, or in a
22 system vehicle. This paragraph does not apply to an activity that
23 is necessary for utilization of a system facility by a bicyclist,
24 including, but not limited to, an activity that is necessary for
25 parking a bicycle or transporting a bicycle aboard a system vehicle,
26 if that activity is conducted with the permission of the agency of
27 the system in a manner that does not interfere with the safety of
28 the bicyclist or other patrons of the system facility.

29 (11) (A) Unauthorized use of a discount ticket or failure to
30 present, upon request from a system representative, acceptable
31 proof of eligibility to use a discount ticket, in accordance with
32 Section 99155, and posted system identification policies when
33 entering or exiting a system station or vehicle. Acceptable proof
34 of eligibility must be clearly defined in the posting.

35 (B) In the event that an eligible discount ticket user is not in
36 possession of acceptable proof at the time of request, an issued
37 notice of fare evasion or passenger conduct violation shall be held
38 for a period of 72 hours to allow the user to produce acceptable
39 proof. If the proof is provided, that notice shall be voided. If the

1 proof is not produced within that time period, that notice shall be
2 processed.

3 (c) (1) The City and County of San Francisco, the Los Angeles
4 County Metropolitan Transportation Authority, the Santa Clara
5 Valley Transportation Authority, ~~the Sacramento Regional Transit~~
6 ~~District~~, Foothill Transit, and the Alameda-Contra Costa Transit
7 District may contract with a private vendor for the processing of
8 notices of fare evasion or passenger conduct violation, and notices
9 of delinquent fare evasion or passenger conduct violation pursuant
10 to Section 99581.

11 (2) For the purpose of this chapter, “processing agency” means
12 either of the following:

13 (A) The agency issuing the notice of fare evasion or passenger
14 conduct violation and the notice of delinquent fare evasion or
15 passenger conduct violation.

16 (B) The party responsible for processing the notice of fare
17 evasion or passenger conduct violation and the notice of delinquent
18 violation, if a contract is entered into pursuant to paragraph (1).

19 (3) For the purpose of this chapter, “fare evasion or passenger
20 conduct violation penalty” includes, but is not limited to, a late
21 payment penalty, administrative fee, fine, assessment, and costs
22 of collection as provided for in the ordinance.

23 (4) All fare evasion and passenger conduct violation penalties
24 collected by the processing agency in the City and County of San
25 Francisco shall be deposited to the general fund of the City and
26 County of San Francisco.

27 (5) All fare evasion and passenger conduct violation penalties
28 collected by the Los Angeles County Metropolitan Transportation
29 Authority or Foothill Transit shall be deposited in the general fund
30 of the County of Los Angeles.

31 (6) All fare evasion and passenger conduct violation penalties
32 collected by the Santa Clara Valley Transportation Authority shall
33 be deposited in the general fund of the County of Santa Clara.

34 ~~(7) All fare evasion and passenger conduct violation penalties~~
35 ~~collected by the Sacramento Regional Transit District shall be~~
36 ~~deposited in the general fund of the County of Sacramento.~~

37 ~~(8)~~

38 (7) All fare evasion and passenger conduct violation penalties
39 collected by the Alameda-Contra Costa Transit District shall be

1 deposited in the general fund of the county in which the citation
2 is administered.

3 (d) (1) If a fare evasion or passenger conduct violation is
4 observed by a person authorized to enforce the ordinance, a notice
5 of fare evasion or passenger conduct violation shall be issued. The
6 notice shall set forth the violation, including reference to the
7 ordinance setting forth the administrative penalty, the date of the
8 violation, the approximate time, and the location where the
9 violation occurred. The notice shall include a printed statement
10 indicating the date payment is required to be made, and the
11 procedure for contesting the notice. The notice shall be served by
12 personal service upon the violator. The notice, or copy of the
13 notice, shall be considered a record kept in the ordinary course of
14 business of the issuing agency and the processing agency, and
15 shall be prima facie evidence of the facts contained in the notice
16 establishing a rebuttable presumption affecting the burden of
17 producing evidence.

18 (2) When a notice of fare evasion or passenger conduct violation
19 has been served, the person issuing the notice shall file the notice
20 with the processing agency.

21 (3) If a person contests a notice of fare evasion or passenger
22 conduct violation, the issuing agency shall proceed in accordance
23 with Section 99581.

24 (e) In setting the amounts of administrative penalties for the
25 violations listed in subdivision (b), the City and County of San
26 Francisco, the Los Angeles County Metropolitan Transportation
27 Authority, the Santa Clara Valley Transportation Authority, ~~the~~
28 ~~Sacramento Regional Transit District~~, Foothill Transit, and the
29 Alameda-Contra Costa Transit District shall not establish penalty
30 amounts that exceed the maximum fine amount set forth in Section
31 640 of the Penal Code.

32 (f) A person who receives a notice of fare evasion or passenger
33 conduct violation pursuant to this section shall not be subject to
34 citation for a violation of Section 640 of the Penal Code.

35 SEC. 3. Section 99581 of the Public Utilities Code is amended
36 to read:

37 99581. (a) For a period of 21 calendar days from the issuance
38 to a person of the notice of fare evasion or passenger conduct
39 violation, the person may request an initial review of the violation
40 by the issuing agency. The request may be made by telephone, in

1 writing, or in person. There shall be no charge for this review. If,
2 following the initial review, the issuing agency is satisfied that the
3 violation did not occur or that extenuating circumstances make
4 dismissal of the administrative penalty appropriate in the interest
5 of justice, the issuing agency shall cancel the notice. The issuing
6 agency shall advise the processing agency, if any, of the
7 cancellation. The issuing agency or the processing agency shall
8 mail the results of the initial review to the person contesting the
9 notice and if following that review, cancellation of the notice does
10 not occur, the agency shall include a reason for that denial,
11 notification of the ability to request an administrative hearing, and
12 notice of the procedure adopted pursuant to subdivision (b) for
13 waiving prepayment of the penalty based upon inability to pay.

14 (b) If the person is dissatisfied with the results of the initial
15 review, the person may request an administrative hearing of the
16 violation no later than 21 calendar days following the mailing of
17 the results of the issuing agency's initial review. The request may
18 be made by telephone, in writing, or in person. The person
19 requesting an administrative hearing shall deposit with the
20 processing agency the amount due under the notice for which the
21 administrative hearing is requested. The issuing agency shall adopt
22 a written procedure to allow a person to request an administrative
23 hearing without payment of the amount due upon satisfactory proof
24 of an inability to pay the amount due. An administrative hearing
25 shall be held within 90 calendar days following the receipt of a
26 request for an administrative hearing, excluding time tolled
27 pursuant to this chapter. The person requesting the hearing may
28 request one continuance, not to exceed 21 calendar days.

29 (c) The administrative hearing process shall include all of the
30 following:

31 (1) The person requesting a hearing shall have the choice of a
32 hearing by mail or in person. An in-person hearing shall be
33 conducted within the jurisdiction of the issuing agency. If an
34 issuing agency contracts with a private vendor pursuant to
35 paragraph (1) of subdivision (c) of Section 99580, hearings shall
36 be held within the jurisdiction of the issuing agency.

37 (2) The administrative hearing shall be conducted in accordance
38 with written procedures established by the issuing agency and
39 approved by the governing body or chief executive officer of the

1 issuing agency. The hearing shall provide an independent,
2 objective, fair, and impartial review of contested violations.

3 (3) The administrative review shall be conducted before a
4 hearing officer designated to conduct the review by the issuing
5 agency's governing body or chief executive officer. In addition to
6 any other requirements of employment, a hearing officer shall
7 demonstrate those qualifications, training, and objectivity
8 prescribed by the issuing agency's governing body or chief
9 executive as are necessary and which are consistent with the duties
10 and responsibilities set forth in this chapter. The hearing officer's
11 continued employment, performance evaluation, compensation,
12 and benefits shall not be directly or indirectly linked to the amount
13 of fare evasion or passenger conduct violation penalties imposed
14 by the hearing officer.

15 (4) The person who issued the notice of fare evasion or
16 passenger conduct violation shall not be required to participate in
17 an administrative hearing. The issuing agency shall not be required
18 to produce any evidence other than the notice of fare evasion or
19 passenger conduct violation. The documentation in proper form
20 shall be prima facie evidence of the violation pursuant to paragraph
21 (1) of subdivision (d) of Section 99580.

22 (5) The hearing officer's decision following the administrative
23 hearing may be personally delivered to the person by the hearing
24 officer or sent by first-class mail.

25 (6) Following a determination by the hearing officer that a
26 person committed the violation, the hearing officer may allow
27 payment of the fare evasion or passenger conduct penalty in
28 installments or deferred payment if the person provides satisfactory
29 evidence of an inability to pay the fare evasion or passenger
30 conduct penalty in full. If authorized by the issuing agency, the
31 hearing officer may permit the performance of community service
32 in lieu of payment of the fare evasion or passenger conduct penalty.